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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 428.

H. CHASSANOIL, APPELLANT,

VS.

CITY OF GREENWOOD, APPELLEE.

BRIEF FOR APPELLANT.

EDWARD W. SMITH,
WARD ALLEN,
SAM C. COOK,
MARCELLUS GREEN,
GARNER W. GREEN,
Counsel for Appellant.



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BRIEF FOR APPELLANT.

This is an appeal from the decision of the Supreme Court of the State of Mississippi in the case of *H. Chassanoil* v. *City of Greenwood,* 148 So. 781.

STATEMENT OF THE CASE.

Appellant, H. Chassanoil, is a cotton buyer and shipper doing business in the City of Greenwood, Leflore County, Mississippi, and is one of the class of cotton buyers and shippers constituting the appellees in the case of *W. L. Matthews et al.* v. *J. F. Rodgers et al.,* being No. 84 of the October Term, 1931, of the Supreme Court of the United States, wherein the right

of the State of Mississippi to levy and exact a privilege tax from the appellees therein was challenged as contravening the Commerce Clause of the Constitution of the United States (Article 1, Section 8, Clause 3).

J. F. Rodgers *et al.* in that cause filed their bill in equity in the District Court of the United States for the Northern District of Mississippi, seeking an injunction against the attempted enforcement of Section 56 of Chapter 88 of the Laws of Mississippi of 1930, on the ground that the business of plaintiffs constituted a part of interstate commerce and the attempted enforcement and collection of the privilege tax constituted an interference with or burden upon interstate and foreign commerce and was, therefore, constitutionally unauthorized.

Pursuant to Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925, Chapter 225, Section 1, a statutory three-judge court was convened and after full hearing perpetually enjoined the officers and agents of the State of Mississippi charged with the enforcement of the statute from undertaking to exact from the plaintiff the privilege tax therein levied or enforce the penalties provided.

On appeal to the Supreme Court of the United States, the final decree of the statutory three-judge court was reversed on the ground that the court was without jurisdiction to hear and determine the cause, the appellees having a full, complete and adequate remedy at law.

W. L. Matthews et al. v. *J. F. Rodgers et al.*, 284 U. S. 521.

Pursuant to Chapter 88 of the Mississippi Laws of 1930 and Chapter 89 of the Mississippi Laws of 1932 (being the Privilege Tax Statutes of the State of Mississippi), the City of Greenwood, Leflore County, Mississippi, by two ordinances adopted June 3, 1930, and June 7, 1932, levied a privilege tax for each year in the amount of $50.00 for the privilege of engaging in the business of cotton buyer to the same extent and in like manner as provided in Chapter 88 of the Laws of 1930 and in Chapter 89 of the Laws of 1932 of the State of Mississippi. On the 1st day of October, 1931, appellant paid the privilege tax under protest and there was issued to him a privilege license to carry on the business of "Cotton Buyer" for a term of one year from September 1, 1931, and on the 1st day of September, 1932, paid a like sum of $50.00 under protest for the privilege of carrying on the business of "Cotton Buyer" for a term of one year from the 1st day of September, 1932.

By virtue of the provisions of Section 2591 of the Mississippi Code of 1930, appellant filed his application for refund of said tax with the City Council of the City of Greenwood, Mississippi, on the ground that he was engaged in interstate and foreign commerce and that the privilege tax levied constituted a direct burden upon interstate commerce contravening Article 1, Section 8, Clause 3 of the Federal Constitution and that the statutes and municipal ordinances levying said privilege taxes were void in so far as applicable to his business.

Inasmuch as the majority opinion of the Supreme Court of the State of Mississippi erroneously indicates

that this cause was tried on an agreed statement of facts, we set forth the proceedings before the City Council of the City of Greenwood and the proceedings chronologically thereafter through the Supreme Court of Mississippi.

The facts and conclusions of fact and law relied upon were set out *in extenso* in the verified application for a refund.

(Record page 6 through 13.)

On the hearing of the application before the City Council of the City of Greenwood, the following evidence was introduced:

(1) The enactment of the ordinances challenged.

(2) Payment under protest by appellant of the tax.

(3) The verified application of appellant.

The facts alleged in this application were admitted in evidence at the hearing before the council by agreement, but there was no agreement that the facts so alleged were true. The record discloses the following:

> "Thereupon, the aforesaid verified application in its entirety, including Exhibits 'A,' 'B,' 'C' and 'D' thereto, was offered and introduced by the said applicant in evidence, and it was agreed by the city council that the facts alleged in said verified application should be admitted as evidence, and the same were so admitted.
>
> "Thereupon, the following order by the board was made and entered:
>
> "By agreement with H. Chassanoil, it is ordered that all facts alleged in the verified application of

said H. Chassanoil for refund of privilege license be admitted as evidence."

(Record pages 20-21.)

This was all of the evidence offered in the case by appellant or by appellee and was the basis of the order of the City Council of the City of Greenwood denying appellant's application.

Pursuant to Section 61 of the Mississippi Code of 1930, an appeal was perfected to the Circuit Court of Leflore County, Mississippi, by bill of exceptions as provided by said section, and the Circuit Court heard the cause as an appellate court and affirmed the order of the City Council of the City of Greenwood.

An appeal from the Circuit Court decision was duly perfected to the Supreme Court of Mississippi, wherein the same questions were presented resulting in an affirmance.

The judgment of the Supreme Court of Mississippi, being the highest court of Mississippi in which this question might be determined, was in favor of the validity of the statutes and ordinances and denied the asserted federal right.

Justice Anderson filed a written dissenting opinion.

H. Chassanoil v. *City of Greenwood*, 148 So. 781 (not yet officially reported).

"The facts of these cases were not agreed to but are not in dispute. Appellee offered no evidence at the conclusion of appellants' but agreed that appellants' petition for the refund of the taxes, and the exhibits thereto, should be admitted in evidence. This was done and constituted all the evidence in the case."

Justice Anderson's dissenting opinion.

Having thus exhausted his remedies at law through the highest court of the State of Mississippi, this appeal is taken under Section 237 of the Judicial Code as amended, being Section 344, Title 28, U. S. C. A., and under Section 861 A, Title 28, U. S. C. A.

The Supreme Court of the State of Mississippi held that the statutes and ordinances challenged by appellant applied solely to intrastate commerce and did not apply to interstate commerce, that appellant was at least partly engaged in intrastate commerce and was liable for the privilege tax and denied that the exaction of the privilege tax from appellant as a condition precedent to engaging in his occupation as cotton buyer was a violation of the Commerce Clause of the Constitution of the United States.

The statutes of the State of Mississippi whose constitutionality is challenged in this cause, are:

1. Section 56 of Chapter 88, Mississippi Laws of 1932. (See page 43 of the appendix hereto, for the full text of this statute.)

2. Section 62 of Chapter 89, Mississippi Laws of 1932. (See page 44 of the appendix hereto, for the full text of this statute.)

3. Section 2445, Mississippi Code of 1930. (See page 44 of the appendix hereto, for the full text of this statute.)

The two ordinances of the City of Greenwood, Mississippi, whose constitutionality is challenged in this cause, are:

1. An ordinance of the City of Greenwood, approved June 3, 1930. (See page 13 of the Record.)

2. An ordinance of the City of Greenwood, approved June 7, 1932. (See page 17 of the Record.)

The payment of the privilege tax assessed by the statutes was made a condition precedent to engaging in the business of a cotton buyer, and a failure to pay the privilege tax subjected the cotton buyer to the penalties set forth in Section 225 of Chapter 88, Mississippi Laws of 1930. (See page 45 of the appendix hereto, for the full text of this statute.)

Section 3 of each of the two ordinances of the City of Greenwood, Mississippi, above referred to, adopts Section 225, Chapter 88, Mississippi Laws of 1930. This action by the City of Greenwood was authorized by Section 2549, Mississippi Code of 1930. (See page 45 of the appendix hereto, for the full text of this statute.)

The verified statement of facts set forth in the application for refund of privilege taxes filed with the City Council of the City of Greenwood, Mississippi, was admitted as evidence and is not in dispute. These facts constitute the basis of the decision of the City of Greenwood, the Circuit Court of Leflore County, Mississippi, and the Supreme Court of the State of Mississippi.

(Record pages 6-21.)

It, therefore, appears from the record that the following uncontroverted evidence constitutes the facts:

ESTABLISHED FACTS.

The Mississippi Delta, an alluvial body of land located within the confines of the State of Mississippi, comprises about 6,650 square miles. It is bounded on the north by the northern boundary of the state and extends along its western boundary in a southerly direction for approximately 190 miles, the western boundary thereof being the Mississippi River. It varies in width from a few yards to approximately 50 miles. The soil of the Mississippi Delta is peculiarly adaptable to the growing of what is commonly known as Delta-type, long staple cotton, which is a peculiar type of cotton, recognized throughout the world in the cotton trade as being of a superior type, character and strength. Yarns spun from this cotton compare favorably with yarns spun from the famous Egyptian and Sea Island long staple cottons.

The City of Greenwood is centrally located in the Mississippi Delta, which is exclusively an agricultural community, its principal crop being this long staple cotton. It produces an average crop of approximately 700,000 bales, which is more than forty percentum of the average annual production of cotton in the State of Mississippi, and is the only product which is raised by the agriculturalists located in the Delta, which is sold on the open market.

All of this cotton, when it ripens in the field, is picked by hand, put through a ginnery, by the process of which the lint is removed from the seed and the lint cotton (in which appellant deals exclusively) is wrapped and tied

into bales weighing approximately 500 pounds each. A bale of cotton when wrapped and tied at the gin is approximately 5 feet in length, 3½ feet wide and 4½ feet in height.

By general and uniform custom, bales of cotton from the gins are transported by rail or otherwise to compresses. A compress is a combination storage warehouse and plant equipped with machinery designed to press bales of cotton under extremely high pressure, for the purpose of reducing the size. A bale, after compression, is approximately 18 inches thick, the purpose of compression being that the railroads and carriers by water, for transportation in interstate and foreign commerce, are able to load into freight cars and steamships approximately three times as much cotton after compression as otherwise would be possible.

At Greenwood, there are three compresses, owned and operated respectively by separate corporations. All of these companies have complied with all of the terms and provisions of an Act of Congress, the short title of which is "The United States Warehouse Act," being Chapter 10, Title 7, U. S. C. A. These companies complied with the terms of the "United States Warehouse Act" for the reason that all of the cotton stored in the compresses and warehouses at Greenwood, Mississippi, and bought by appellant and other cotton buyers, was and is cotton stored and handled therein for shipment to foreign states and countries.

When cotton is delivered to the compresses, actual samples are taken from each bale and classed by per-

sons licensed as classers by the United States Department of Agriculture.

At Greenwood, there exists an active market for the sale and purchase of cotton between the producers and appellant and others engaged in like business, who purchase it with the invariable intention and purpose of selling and transporting the cotton to mills or brokers located in the states upon the Atlantic Seaboard, to-wit: Georgia, South Carolina, North Carolina and Tennessee and the mills of the New England States, to-wit: Massachusetts, Rhode Island and Connecticut, and the mills of foreign countries. None of the cotton is spun or utilized within the State of Mississippi or sold to or purchased by any consumer within the State of Mississippi, nor shipped to any point within the state. This is and has been the universal custom and course of business for more than twenty years.

The price governing the sale of cotton on the Greenwood market is governed by the value of cotton determined by certain cotton exchanges maintained in the Cities of New Orleans, Louisiana, New York City, Chicago, Illinois, and Liverpool, England. There are maintained in the City of Greenwood, Mississippi, offices of brokers, who daily receive by wire, for periods of approximately five hours each day, continuous quotations from these exchanges, which fix and determine the price for which cotton is bought and sold in the Greenwood market.

Approximately 70% of the cotton is transported and delivered to the compresses by rail over the lines of the Yazoo & Mississippi Valley and Columbus & Green-

ville Railroads, both common carriers engaged in interstate commerce. Some growers ship all of their cotton by rail, others transport their cotton to the compresses by truck, automobile or wagon, while others ship a portion by rail and transport the remainder by truck, automobile or wagon. The cotton is thus concentrated in the compresses solely for the purpose of storage and compression to await the determination for its final point of destination to foreign mills and brokers. In the general and uniform course of his business the appellant buys cotton indiscriminately regardless of the means of transportation to the compress from the gin.

When the destination of the cotton is determined, the carriers, after compression, load the cotton on shipping instructions of the then owner charging the through freight rate from the initial point of origin to the ultimate point of destination outside the State of Mississippi, instead of the combination rate for carriage from the initial point of origin to Greenwood, and from Greenwood to the point of ultimate destination outside the State of Mississippi. The charges thus made are pursuant to regulations prescribed by the Interstate Commerce Commission under the Acts of Congress.

Appellant's general and uniform course of business in buying and shipping cotton upon this market is, as follows:

When cotton is delivered to the compress, the grower causes negotiable warehouse receipts to be issued for each bale either directly to himself or his agent, commonly called a cotton factor. These receipts comply with the

terms and provisions of the Act of Congress. Upon the Greenwood market there are a number of such factors and approximately twenty buyers and shippers who are engaged in the sole business of buying, selling and shipping cotton to foreign states and countries. The cotton is sold to the buyers and shippers upon the basis disclosed by the character of samples of the cotton and by the endorsement and delivery of the negotiable cotton receipts evidencing ownership, in accordance with the terms of the Act of Congress. It is uniformly known and understood by the farmer, cotton factor and buyer that the buyer is purchasing the cotton solely for the purpose of causing it to be transported by rail and/or water and delivered to points outside of Mississippi and in other states and foreign countries, where mills convert the cotton into textile products.

The general course and uniform custom among buyers, shippers and sellers, as well as the general course of business, is that a buyer first enters into a contract for either the future or immediate delivery of a certain number of bales of cotton of a certain class, grade and staple, obligating himself by such contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, the buyer will go upon the market at Greenwood and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of the cotton to the foreign points in accordance with the terms of his contract. A very small proportion of the cotton purchased by shippers and cotton buyers (not exceeding 10%) is

bought when no contract for sale therefor exists. In such cases, it is bought with the sole anticipation and intention on the part of the buyer. (which intention is fully known to the farmer, buyer or factor) to procure a sale of the cotton to foreign cotton mills or foreign cotton merchants and to cause it to be transported in interstate and/or foreign commerce at such time as market conditions will justify. With reference to that proportion (not exceeding 10%) which the buyers purchase when they hold no contract for its sale, these purchases are only a necessary incident to and concomitant part of those purchases which are made for the purpose of filling specific contracts already entered into by the buyers with mills located in states other than in Mississippi and in foreign countries. These incidental purchases called "Overs" arise in cases where the grower insists on offering and selling in one transaction a specified number of bales of cotton of his own selection, and this is the usual and customary manner in which the growers sell their cotton. Without exception, the grades and staples of the lots of cotton offered for sale by the growers, are not uniform as between the various bales of cotton composing such lots. It very frequently happens that a small proportion of a lot of cotton, the purchase of which is contemplated by a buyer, is of a character or grade or staple which the buyer cannot use in filling any existing order which he then holds. The buyer, however, cannot fill his orders without buying these lots of cotton and he must buy these lots in their entirety because the grower will sell no other way. In this way the buyers accumulate and carry on hand small

stocks of cotton not exceeding 10% of the total amount which they handle, but such accumulations are either sold promptly to other buyers on the Greenwood market, who hold orders from mills outside the State of Mississippi for the type of cotton thus incidentally accumulated, or they are shipped by the buyer to foreign states and countries as soon as he can obtain an order therefor in the usual course of his business.

All of appellant's business is conducted in this manner, which is the usual and ordinary and customary course of business in the buying and selling of cotton in the Mississippi Delta.

POINTS RELIED UPON FOR REVERSAL OF THIS CAUSE.

POINT I.

Appellant is solely engaged in interstate commerce and neither the City of Greenwood nor the State of Mississippi is authorized to exact privilege taxes of the appellant as a condition precedent to engage therein, and the attempted exaction contravenes the Commerce Clause of the Constitution of the United States.

POINT II.

The privilege taxes levied, being inseparable and indivisible cannot be exacted from appellant, should it be held that a part of the business of appellant is in intrastate commerce.

POINT III.

The imposition of the privilege taxes, as applied to appellant, constitutes a direct interference with or burden upon interstate and foreign commerce and, therefore, contravenes Article 1, Section 8, Clause 3 of the Constitution of the United States.

BRIEF AND ARGUMENT.

POINT I.

Opinion of Supreme Court of Mississippi.

The majority opinion of the Supreme Court of Mississippi did not discuss the legal principles precisely applicable to the facts shown by the record. That Court held:

A.

Neither the State of Mississippi nor the City of Greenwood is authorized or empowered to levy a privilege tax as a condition precedent to conducting a business of interstate or foreign commerce.

B.

The privilege tax levied by the State of Mississippi and the City of Greenwood was applicable alone to intrastate business.

C.

Appellant was engaged in both intrastate and interstate commerce.

This latter holding misconceives the effect of the course of business of appellant and it is with this holding primarily to which we take exception.

The facts without dispute showed that 30% of the cotton concentrated in compresses in the City of Greenwood was transported thereto by trucks and wagons or

other private conveyances, whereas the balance of the cotton therein concentrated was transported by rail. The Supreme Court of Mississippi apparently conceived the idea that because part of the cotton was transported by conveyance other than rail and because this cotton had not definitely been consigned outside of the State of Mississippi from its point of origin, the purchase and shipment by appellant of this cotton after it had reached the compress constituted an intrastate transaction. Apparently, the Court differentiated between cotton thus transported to the compress and bought and shipped by appellant from cotton transported thereto by rail.

> "In the case before us, as to the 30% that is transported by trucks and wagons or other private conveyances and placed in storage in Greenwood, and not consigned to anyone outside of the State nor sold to anyone outside the State, the property is not in interstate commerce. The owner might withdraw it or sell it whenever he pleases."
>
> Opinion of Supreme Court of Mississippi, 148 So. 785.

> "There is, in fact, much buying and selling of cotton in this State that is in no sense intrastate commerce, and the Legislature knew this to be true."
>
> Opinion of Supreme Court of Mississippi, 148 So. 785.

And again,

> "It is agreed that 30% of the cotton brought into Greenwood and stored there is brought in by trucks, automobiles and wagons, and not placed in interstate commerce at the time it is stored in the warehouses nor, in any sense, consigned to any person for shipment in interstate commerce when sales are made."
>
> Opinion of Supreme Court of Mississippi, 148 So. 784-785.

It has never been contended nor is it now contended by the appellant that the character of the commerce in which he is engaged is in any wise affected by the means used by the grower for the transportation of the cotton from the gins into concentration at the compresses. The facts show that the cotton thus concentrated, after sampling and grading for type, staple and grade, is bought and shipped by appellant in the manner shown by the undisputed facts without regard as to how the cotton was transported to the compress.

It is the contention of the appellant that the Supreme Court of Mississippi cannot declare a transaction an intrastate transaction, which is in fact a transaction in interstate and foreign commerce.

Appellant cannot be thus deprived of his federal right guaranteed to him under the Constitution of the United States.

Moreover the Attorney General of the State of Mississippi in

Matthews v. *Rodgers*, 284 U. S. 521,

agreed that the course of business of appellant and cotton buyers of the class of appellant was as shown by the undisputed evidence in this case, and the attorney general likewise agreed to a statement of facts in all respects in conformity with the facts of this cause in

Federal Compress & Warehouse Co. et al. v. *E. R. McLean, Sheriff, etc.*, being Cause No. 166, October, 1933, Term, Supreme Court of the United States.

The record, therefore, does not bear out the conclusion of the majority opinion of the Supreme Court of Mississippi in this cause that a part of the cotton which is brought into Greenwood is not "in any sense consigned to any person for shipment in interstate commerce when sales are made."

This record and the record in *Matthews* v. *Rodgers, supra,* and the record in *Federal Compress & Warehouse Co.* v. *McLean, supra,* show that all of the cotton brought into the Greenwood compresses, when sales are made, is inevitably consigned for shipment in interstate commerce.

The question of the applicability to the business of appellant of the statutes of the State of Mississippi and the ordinances of the City of Greenwood, herein challenged, is one of original determination by the Supreme Court of the United States, regardless of the declaration of the Supreme Court of the State of Mississippi. The majority opinion of the State Supreme Court confuses this rule with the rule that a State Supreme Court's construction of the scope and purpose of a state statute is binding.

> "In cases brought to this Court from state courts for review, on the ground that a Federal right set up in the state court has been wrongly denied, and in which the state court has put its decision on a finding that the asserted Federal right has no basis in point of fact, or has been waived or lost, this court, as an incident of its power to determine whether a Federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here (citing authorities). Another class

of cases in which this court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts'' (citing authorities).

Truax v. *Corrigan*, 257 U. S. 312, 66 L. Ed. 254.

The undisputed facts show that all of the cotton raised, produced and concentrated for sale in the Delta of the State of Mississippi is actually bought and shipped out of the State of Mississippi by appellant or others engaged in a similar business; that the cotton is concentrated in warehouses licensed under the United States Warehouse Act, classed and graded by classers licensed by the Secretary of Agriculture and placed upon interstates carriers for immediate shipment to mills located outside the State of Mississippi; that the price paid is governed by cotton exchanges located in the City of New York, the City of Chicago, the City of New Orleans and Liverpool, England. None of the cotton is used or consumed in the State of Mississippi and the sole and entire business of appellant and the entire course of his business is to purchase for shipment and the actual shipment of this cotton in interstate and foreign commerce and to be delivered and applied on existing contracts for the shipment thereof to foreign mills and brokers.

The grower transports the cotton from the gin to the compress for concentration and sale to appellant and others in like business, with the intention and knowledge that the cotton will be so purchased, sold and ultimately delivered to points wholly without the State of Mississippi. This is true whether the cotton is transported to

the compresses by rail, wagon or other common carrier or private conveyance.

The privilege tax levied on appellant as a condition precedent to the purchase by appellant of the cotton is a tax upon an essential agency without which the cotton would never move along the channels of interstate and foreign commerce. The act of purchasing and delivering to a carrier after compression for shipment is an indispensable part of the continued transportation of the commodity to the ultimate consumer located in a foreign state or country.

> "Buying for shipment and shipping to markets in other states, when conducted as above shown, constitutes interstate commerce—the buying being as much a part of it as the shipping."
>
> *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189.

The primary and essential fact to be determined is whether or not the course of business in which appellant engages is interstate or foreign commerce. If appellant's business is that of interstate or foreign commerce, then the extent of conditioning its exercise or interference with or burden placed upon his business is immaterial.

Cudahy Packing Co. v. *Hinkel*, 278 U. S. 460.

In determining whether or not appellant is engaged in interstate and foreign commerce, we cannot differentiate the facts in this case from the facts in the following cases, decided by this Court.

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282;

Wm. Lemke v. *Farmers Grain Co.*, 258 U. S. 50;

Shafer v. *Farmers Grain Co.*, 268 U. S. 189.

The facts of the *Lemke Case, supra,* and *Shafer Case, supra,* and the conclusions reached by the court are so clearly in conformity with the contention of appellees in this case, we take the liberty of quoting *in extenso* from the opinions in those causes.

The facts and conclusions of the court in the Lemke case, through Mr. Justice Day, so far as pertinent to the case at bar, are as follows:

> "The record discloses that North Dakota is a great grain-growing state, producing annually large crops, particularly wheat, for transportation beyond its borders. Complainant and other buyers of like character, are owners of elevators and purchasers of grain bought in North Dakota, to be shipped to and sold at terminal markets in other states, the principal markets being at Minneapolis and Duluth. There is practically no market in North Dakota for the grain purchased by complainant. The Minneapolis prices are received at the elevators of the complainant from Minneapolis four times daily, and are posted for the information of those interested. To these figures the buyer adds the freight and his 'spread' or margin of profit. The purchases are generally made with the intention of shipping the grain to Minneapolis. The grain is placed in the elevator for shipment, and loaded at once upon cars for shipment to Minneapolis and elsewhere outside the State of North Dakota. The producers know the basis upon which the grain is bought, but whoever pays the highest price gets the grain—Minneapolis, Duluth or elsewhere. This method of purchasing, shipment, and sale is the general and usual course of business in the grain trade at the elevator of complainant and others similarly situated. The market for grain bought at Emden is outside the State of North Dakota, and it is an unusual thing to get an offer from a point within the state. After

the grain is loaded upon the cars it is generally consigned to a commission merchant at Minneapolis. At the terminal market the grain is inspected and graded by inspectors licensed under federal law.

"That such course of dealing constitutes interstate commerce, there can be no question. This court has so held in many cases, and we have had occasion to discuss and decide the nature of such commerce in a case closely analogous in its facts and altogether so in principle. *Dahnke-Walker Mill Co.* v. *Bondurant*, decided December 12, 1921 (257 U. S. 282, *ante*, 239, 42 Sup. Ct. Rep. 106). In that case the facts disclose that a company organized in Tennessee, and carrying on business there, went into Kentucky, and, through an agent there, bought wheat for shipment to the company's mill in Tennessee. The state court held that the transaction was merely a purchase of wheat in Kentucky, and made the Tennessee company amenable to the regulatory statutes of the state. This court rejected the conclusion of the state court, and held that the buying, no less than the selling of grain, under such circumstances, was a part of interstate commerce, committed to a national control by the Federal Constitution. Applying the principle of that decision, and the previous decisions of this court, cited in the opinion, the complainant's course of dealing in the buying of grain, which it purchased and sold under the circumstances herein disclosed, was interstate commerce. Being such, the state could not regulate the business by a statute which had the effect to control and burden interstate commerce.

"Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and federal authority under facts presented, which required a definition of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration. In

those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey, by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here. None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond state lines. It is true, that appellants contend, that after the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all of the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transaction * * * (citing authorities) * * *.

"Thus, the states cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it * * *. (Citing authorities.)"

"Applying the principle here, the statute denies the privilege of engaging in interstate commerce, except to dealers licensed by state authorities, and provides a system, which enables state officials to fix the profit which may be made in dealing with a subject of interstate commerce."

After the decision in the above case, the State of North Dakota undertook once again to regulate the purchase of grain within North Dakota. This act was challenged and in the *Shafer Case, supra,* in delivering the opinion of the court, Mr. Justice Van DeVanter stated:

"Wheat is the chief product of the farms of North Dakota, the annual crop approximating 150,000,000 bushels. About 10 per cent is used and consumed locally, and about 90 per cent is sold within the state to buyers who purchase for shipment, and ship to terminal markets outside the state. Most of the sales are made at country elevators to which the farmers haul the grain when harvested and threshed. These elevators are maintained and operated by the buyers as facilities for receiving the grain from farmers' wagons and loading it into railroad cars. The loading usually proceeds as rapidly as grain of any grade is accumulated in carload lots and cars can be obtained. When a car is loaded, it is sent promptly to a terminal market and the grain is there sold. This is the usual and recognized course of buying and shipment. Occasionally a farmer has his grain stored in the country elevator, or shipped to a terminal elevator for storage, *and awaits a possible increase in price;* but even in such instances he usually sells to the buyer operating the country elevator, and the latter then sends the grain to the terminal market, if it has not already gone there.

"The price paid at the country elevators rises and falls with the price at the terminal markets, but is sufficiently below the latter to enable the country buyer to pay for the intermediate transportation and have a margin of profit. All transactions at the terminal markets, including the price, are based on the grade of the wheat, and by reason of this all buying at the country elevators is by grade.

"The grading at the terminal markets is done by inspectors licensed under the United States Grain Standards Act, who are required to apply to all interstate shipments the grading standards promulgated under that act by the Secretary of Agriculture. There are no inspectors licensed under that act at the country elevators; and so the grading is done there unofficially by the buyers or their agents as an incident and part of the buying.

"Grading includes an ascertainment of the proportions of clean wheat and of dockage in each lot of grain, and an ascertainment of the quality of the wheat. Dockage consists of separable foreign material, such as dirt, pieces of straw, chaff, weed stems, weed seeds, and grain other than wheat. Its proportion varies in different lots, but generally is less than 5 per cent. When not separated it causes the grain to bring a lower price per bushel than clean wheat would bring. When separated it has a value for poultry and stock feed which usually is in excess of the cost of separation. Occasionally the farmer separates it at the farm and sells only the clean wheat, and occasionally the buyer separates it at the country elevator, charges the farmer for that service, and buys and ships only the clean wheat; but generally the grain is sold by the farmer and shipped by the country buyer with the dockage included. The influence of dockage on the value of the grain and the current modes of handling it are shown in publications of the Agricultural Department of the United States, pertinent excerpts from which are set out in the margin.

"As many as 2,200 country elevators are operated within the state in the business here described—generally two or more by competing buyers at each station. Some of the buyers are individuals and others are corporations. A large number of farmers' cooperative companies, which buy grain grown by their stockholders and others in the vicinity of their elevators, ship and sell the same, and distribute as patronage dividends the surplus arising from such transactions—no profit being retained by the companies.

"The plaintiffs compromise, many buyers, individual and corporate, including eleven farmers' cooperative companies. In the aggregate they own and operate several hundred country elevators, widely distributed over the state, and buy and ship about 30,000,000 bushels of wheat per year. They carry

on the business severally, each buying and shipping independently of the others. All buy with the purpose of shipping to and selling in terminal markets outside the state, and carry out this purpose in the manner already described."

The Court, after setting out the above facts, stated:

"Buying for shipment and shipping to markets in other states, when conducted as above shown, constitutes interstate commerce—the buying being as much a part of it as the shipping. We so held in *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 66 L. Ed. 458, 42 Sup. Ct. Rep. 244; following and applying the principle of prior cases. Later cases have given effect to the same principle. *Stafford* v. *Wallace*, 258 U. S. 495, 516, 66 L. Ed. 735, 741, 23 A. L. R. 229, 42 Sup. Rep. 397; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 309, 68 L. Ed. 308, 316, 44 Sup. Ct. Rep. 96. Wheat—both with and without dockage—is a legitimate article of commerce and a subject of dealings that are nation wide. The right to buy it for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution."

The Court likewise stated:

"We think it plain that, in subjecting the buying for interstate shipment to the conditions and measure of control just shown, the act directly interferes with and burdens interstate commerce, and is an attempt by the state to prescribe rules under which an important part of such commerce shall be conducted. This no state can do consistently with the commerce clause."

In the case at bar, it is undisputed that *all* of the cotton purchased by appellant is actually shipped to points without the State of Mississippi and, therefore, it would be impossible to entertain any intention other than that this course would be followed and was so intended at the time of the purchase. Even though certain "Overs" should have been disposed of locally by appellant to other cotton buyers, the latter bales of cotton likewise were intended ultimately to be shipped to foreign states and countries, and furthermore they were only bought as a necessary incident to the purchase of cotton which had already been sold without the state.

The *Dahnke-Walker Milling Co. Case, supra,* approved in the *Lemke Case, supra,* states the rule as follows:

> "Such commerce (commerce among the several states) is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. Where goods in one state are transported into another state for purposes of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they have reached their destination, and while they are in the original packages * * * (citing authorities) * * *. On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation * * *." "Buying and selling and the transportation incidental thereto constitute commerce." * * * "Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states and includes not only the transportation of persons and property and the navigation of public

waters for that purpose, but also the purchase, sale and exchange of commodities. In no case has the Court *made any distinction* between buying and selling or between buying for transportation to another state and transporting for sale in another state."

The holdings in the above-entitled causes completely answer the majority opinion of the Supreme Court of Mississippi in this cause. A difference of no consequence between the facts in the *Shafer* and *Lemke Cases, supra,* and the facts of the case at bar is that the buyers in those cases owned the elevators in which the grain was concentrated, whereas in the instant case, the warehouses and compresses are separately owned institutions operating under the United States Warehouse Act.

If the cotton thus concentrated in the compresses and warehouses was not a subject matter of interstate and foreign commerce, regulation thereof under the provisions of the Act of Congress would not be permitted.

In the *Lemke* and *Shafer Cases, supra,* it was conceded that 10% of the wheat concentrated in the elevators in North Dakota was used and consumed in the State of North Dakota and 90% thereof bought by the buyers and shipped out of the State of North Dakota. In the instant case, it is shown that all of the cotton concentrated in the compresses and warehouses in the Delta of Mississippi is bought, sold and shipped out of the State of Mississippi and that no part thereof is used or consumed in the state. It is shown that the grower, as well as the buyer and factor, knows and it is the intention of each that the cotton transported from the gin to the compresses is to be sold to the buyers and for-

warded from the compresses by rail or water to mills in foreign states and countries.

Under these facts, the exaction of privilege tax by the State of Mississippi or the City of Greenwood conditioning the exercise of the right of appellant to engage in his occupation as a buyer and shipper of cotton directly interferes with and places a burden upon interstate commerce.

Sprout v. *City of South Bend*, 277 U. S. 163;
Eureka Pipe Line, etc., v. *Walter S. Hallanan*, 257 U. S. 265;
United Fuel Gas Company v. *Hallanan*, 257 U. S. 277;
Burton et al. v. *Clyne, etc.*, 258 U. S. 495;
State Tax Commission v. *Interstate Natural Gas Co.*, 284 U. S. 41.
Compare: *Somebarn* v. *Keeling*, 262 U. S. 506.

"It has long been settled that a state cannot lay a tax on interstate commerce in any form • • • whether on the transportation of subject of commerce, the receipts derived therefrom, or the occupation or business of carrying it on."
Ozark Pipe Line Corp. v. *Monier*, 266 U. S. 555.

That the purchase of cotton within Mississippi for sale and transportation without Mississippi is not a local transaction, which may be conditioned by the state by the levy of a tax, is settled in:

Dahnke-Walker Milling Co. v. *Bondurant, supra;*

and this is true even though the transaction of purchase and sale is completed in the State of Mississippi.

Federal Trade Commission v. *Pacific States Paper Trade Ass'n*, 273 U. S. 52;
Foster Fountain Packing Co. v. *Haydel*, 278 U. S. 1.

The fact that the cotton is temporarily concentrated by the growers in a compress, thereafter to be sold and shipped, does not interrupt the interstate character of the commerce.

> "The film contracts were between residents of different states, and contemplated the leasing by one to the other of a commodity manufactured in one state and transported and to be transported to and used in another. The business of the distributors, of which the arrangement with the exhibitor here was an instance, was clearly interstate. It consisted of manufacturing the commodity in one state, finding customers for it in other states, making contracts of lease with them, and transporting the commodity leased from the state of manufacture into the states of the lessees. If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstances that, in the course of the process, the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessee in the same state, put an end to the interstate character of the transaction and transform it into one purely intrastate? We think not. The intermediate delivery to the agency did not end, and was not intended to end, the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination. The general rule is that where transportation has acquired an interstate character, 'it continues at least until the load reaches the point where the parties originally intended that the movement should finally end'" (citing authorities).

See:

Binderup v. *Pathe Exchange*, 263 U. S. 291;
Carson Petroleum Co. v. *Vial*, 279 U. S. 95;
Coe v. *Errol*, 116 U. S. 517;

Champlain Realty Co. v. *Battleboro*, 260 U. S. 366;

Hughes Bros. Timber Co. v. *Minnesota*, 272 U. S. 469;

Southern Pacific Terminal Co. v. *Interstate Commerce Commission*, 219 U. S. 498;

Texas & N. O. R. Co. v. *Sabine Tram Co.*, 227 U. S. 111;

Swift & Co. v. *United States*, 196 U. S. 375.

See, also:

Stafford v. *Wallace*, 258 U. S. 495.

cited with approval in *Binderup* v. *Pathe Exchange*, *supra*, wherein the Supreme Court stated:

> "Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The Commission men are essential in making the sale, without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity."

As to the character of the commerce of cotton moving into the compress and warehouse and out to ultimate destination compare:

McFadden et al. v. *Alabama G. S. R. Co.*, 241 Fed. 562.

See, also:

United States of America v. *Erie R. Co.*, 280 U. S. 98;

Carson Petroleum Co. v. *Vial*, 279 U. S. 95.

Therefore,

> "It is elementary that a state may tax property used to carry on interstate commerce. But, as the Constitution vests exclusively in the Congress power to regulate interstate and foreign commerce, a state may not tax, burden or interfere with such commerce or tax as such gross earnings derived therefrom or impose a license fee or other burden upon the occupation or the privilege of carrying on such commerce, whatever may be the instrumentalities or means employed to that end."
>
> *New Jersey Bell Telephone Co.* v. *State Board of Taxes and Assessment of State of New Jersey*, 280 U. S. 338.

Federal Control.

The majority of the Supreme Court of Mississippi apparently was of opinion that there was no difference between the state's right to levy a property tax on property, a part of the mass of property of the state, and a tax conditioning the right to engage in interstate commerce. The majority opinion likewise misconceived the difference between property which had ended its journey and property which was in the course of interstate commerce and temporarily interrupted in order to further interstate commerce by the sale thereof.

Although it is not material for a correct solution and decision of this case whether the cotton stored in the compresses remained a part of the mass of the property of the state subject to a property tax or was property in the course of interstate commerce and not subject to a property tax by the State of Mississippi, yet it is submitted that cotton stored for sale, compression and shipment, as reflected by the record in this case is in the

channels of interstate commerce and not subject to a property tax by the state.

The delivery of cotton by farmers to local compresses in Mississippi to be shipped to foreign states and countries, when all of the cotton purchased by cotton buyers from samples taken from the cotton in the compresses is so shipped and the price fixed by that on the New Orleans, Chicago, New York and Liverpool, England, Cotton Exchanges, constitutes a course of business and determines the interstate character of the transaction. When it further appears that the farmer knew and originally intended that the cotton concentrated in the compresses would be purchased by cotton buyers and placed aboard cars and shipped to foreign states and countries and this intention fully carried out with respect to *all* cotton originating from the gins and concentrated in the compress, the compresses

> "are but a throat through which the current flows and the transactions which occur therein are only incidents to this current from the West to the East (*South to the East and abroad*) and from one State to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers (*direct to Cotton Buyers or by sale among themselves*)" (italics our words).
>
> *Stafford* v. *Wallace, supra.*

The controlling principles applicable are stated in:

> *State of Minnesota* v. *George Blasius,* Cause No. 7, October, 1933, Term, United States Supreme Court, decided November 6, 1933, 78 Law. Ed. 19.

All of the cotton thus stored being the subject matter and actually in the channels of interstate commerce, the Congress of the United States has undertaken the regulation thereof in the "United States Warehouse Act," being Chapter 10, Title 7, U. S. C. A., requiring all cotton thus concentrated to be classed and graded in conformity with standards prescribed by the Secretary of Agriculture by cotton classers licensed by the Department of Agriculture of the United States; prescribes the form of negotiable warehouse receipt therefor, and the manner of delivery of cotton evidenced thereby; the Interstate Commerce Commission fixes the intermediate rate from point of origin into the compress to point of ultimate destination, rather than the combination rate.

It, therefore, appears that federal authority has preempted jurisdiction over the handling, purchase, sale and shipment of this cotton at the time it temporarily comes to rest in the compresses. It follows that appellant, in the purchase and shipment of this cotton, is dealing in property actually in the channels of interstate commerce at the time of purchase.

Compare

Jones v. *Hiawatha Gin & Mfg. Co.*, 17 Fed. (2d) 193.

in which District Judge Holmes (Miss.) took judicial knowledge

> "that nearly all cotton produced in this State (Mississippi) finds its way into interstate commerce,"

and entertained jurisdiction of a suit for damages for cotton destroyed in a cotton warehouse licensed under the

United States Warehouse Act as a cause arising under the laws of the United States.

Overs.

It is contended by appellee that the purchase by appellant and like buyers and shippers of cotton, not exceeding 10% of the purchases made, and the resale thereof to other cotton buyers and shippers in Greenwood, constitute transactions in intrastate commerce and the privilege tax complained of being applicable only to intrastate transactions, as held by the Supreme Court of Mississippi, the exaction thereof against appellant and cotton buyers and shippers similarly situated is a valid exercise of state power.

It is apparent that this argument is without foundation in fact. It appears that all local disposition of cotton by these cotton buyers is that which they are compelled to purchase in order to acquire other cotton to apply on contracts, which they have with mills in foreign states and countries, and is acquired as a necessary incident thereof for the reason that the grower sells only cotton of his own selection. It also appears that this cotton, or "Overs," after transfer likewise is applied by the transferee cotton buyer on contracts which the transferee cotton buyer has with mills in foreign states and countries.

This latter condition alone is sufficient to bring the facts of this case within the rule of the *Lemke* and *Shafer Cases, supra.* The inseparable feature of these "Overs," however, is that which differentiates the case at bar from *Pullman Co.* v. *Adams,* 78 Miss. 829;

Osborn v. *Florida*, 164 U. S. 650;
N. O. M. & C. R. R. Co. v. *State*, 110 Miss. 290, (cited in the majority opinion of the Supreme Court of Mississippi).

This is plainly pointed out in the closing paragraph in the dissenting opinion of Mr. Justice Anderson.

It is apparent that the purchase and sale of these "Overs" is a necessary and indispensable incident to the purchase of any cotton by appellant and is, therefore, an incident of his business without which appellant will be unable to carry on any part of his business.

These transactions

> "Create a local change of title, it is true, but they do not stop the flow, they merely change the private interests in the subject of the current, not interfering with, but on the contrary being indispensable to its continuity."
>
> *Stafford* v. *Wallace*, 258 U. S. 495.

To the same effect,

Binderup v. *Pathe Exchange, supra;*
United States of America v. *Erie R. Co., supra.*

Can it be said that because appellant and other buyers similarly situated, in order to pursue their course of business, are unwillingly compelled to acquire certain cotton for which they have no sale and dispose of the cotton thus acquired to other cotton buyers, who in turn apply it on foreign contracts which they have, are engaged in intrastate commerce?

We submit there is no basis in fact for such a theory.

It is, therefore, submitted that under the undisputed facts, appellant is solely engaged in interstate and for-

eign commerce. The exercise of his occupation cannot be conditioned by the State of Mississippi by the imposition of a tax for the privilege of exercising it consistent with the Commerce Clause of the United States Constitution.

POINT II.

The Supreme Court of Mississippi has held that the privilege taxes complained of are solely applicable to intrastate business; that appellant is partly engaged in intrastate commerce and interstate commerce, and, therefore, the statutes and ordinances are not repugnant to the Commerce Clause of the Constitution of the United States.

We have demonstrated that the appellant is solely engaged in interstate commerce. Should, however, it be conceded that appellant's business contemplates both interstate and intrastate commerce, yet the tax as applicable to appellant is violative of the Commerce Clause of the Constitution in that:

(1) The tax is indivisible and inseparable.

(2) Appellant could not discontinue the alleged intrastate business without withdrawing also from the interstate business.

We concede that this Court is bound by the holding of the Mississippi Supreme Court to the effect that the Legislature of Mississippi, in the enactment of the statutes complained of, and the City of Greenwood, in the enactment of the ordinances complained of, intended that they should apply only to intrastate commerce. We, how-

ever, submit that, where the business is inseparable and indivisible and so-called intrastate commerce is a concomitant and inextricable part of the interstate business and where one cannot be carried on without the other, the tax is unenforcible.

"But, in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition, *and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business*" (citing authorities) (italics ours).

Otis Sprout v. *City of South Bend*, 277 U. S. 163.

"The act, in its second section, requires every distributor of gasoline to pay an annual license tax of $50.00 for each distributing station or place of business or agency, requires it to be paid in advance, and renders it unlawful to carry on the business without having paid it. Section 8 declares that any persons who shall engage or continue in the business of selling gasoline without a license shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by fine or imprisonment, or both. The subject taxed is not in its nature divisible, as in the case of the excise tax. The imposition falls upon the entire business indiscriminately; and so does the prohibition against the further conduct of business without making the payment. By accepted canons of construction, the provisions of the act in respect of this tax are not capable of separation so as to confine them to domestic trade, leaving interstate commerce exempt (citing authorities).

No doubt the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the state—that is to say, without authority of law. Hence, it cannot be enforced at all."

Bowman v. *Continental Oil Co.*, 256 U. S. 642.

It is significant that in the *Bowman Case, supra,* it appears that the business conducted by the Continental Oil Company was 94.5 intrastate and 5.5 interstate.

In the case at bar, the maximum sales made from one cotton buyer to another on the Greenwood market constitute not in excess of 10% of the cotton purchased by the buyer.

The Supreme Court of the State of Mississippi having held in effect that appellant was engaged in interstate commerce and intrastate commerce and it appearing that the business so thus conducted is inseparable and that the intrastate business could not be abandoned without likewise abandoning the interstate commerce, the *Bowman Case, supra,* and the *Sprout Case, supra,* are controlling.

POINT III.

The privilege taxes sought to be imposed against appellant forbid appellant from engaging in his business unless the tax first be paid; on failure to pay the tax penalties and damages are imposed and appellant is subject to criminal prosecution.

Under the authority of the *Lemke, Shafer* and *Dahnke-Walker Milling Company Cases, supra,* as well as numerous other decisions of this Court, appellant is engaged in interstate and foreign commerce. His business is an indispensable part of the sale, transportation and distribution of cotton in interstate and foreign commerce concentrated in the compresses at Greenwood, Mississippi, for sale, distribution and transportation to the markets. It is shown that the only markets are markets foreign to the State of Mississippi. It is shown that no part of this cotton is used or consumed in the State of Mississippi. It is shown that as an incident of the purchase of this cotton by appellant and other cotton buyers and shippers, it is necessary among themselves to dispose of not exceeding 10% of the purchases thus made. It is shown that this "Overs" cotton is placed on contracts, which would fit that type, kind and grade of cotton, and continues into the general flow of transportation to other states and foreign countries. It is shown that it is the universal intention of the grower, factor (commission man) and cotton buyer and shipper, that all of the cotton moving from the gins into the compresses shall thereafter be moved by rail or water from the compresses to foreign states and countries, and all of the cotton actually so continues into this channel of commerce.

It is, therefore, submitted that the course of business in which appellant is engaged is indispensable to the continued flow of this cotton to the foreign markets and constitutes interstate and foreign commerce, through the channels of which all of the cotton, stored and sold under the circumstances reflected by the undisputed facts, finds its way.

We commend the dissenting opinion of Mr. Justice Anderson to this court as not only being sound in application of the legal principles involved, but for its clarity in applying these principles to the undisputed facts appearing in the record.

The imposition, therefore, by the State of Mississippi and the City of Greenwood of a tax upon appellant conditioning the privilege of engaging in his occupation as cotton buyer is repugnant to the Commerce Clause of the Constitution of the United States and may not be exacted from him, under the authorities above cited.

Respectfully submitted,

EDWARD W. SMITH,
WARD, ALLEN,
SAM C. COOK,
MARCELLUS GREEN,
GARNER W. GREEN,
Counsel for Appellant.

Certificate.

This is to certify that we have this day delivered to Honorable Greek L. Rice, Attorney General of the State of Mississippi, and to Honorable A. H. Bell, Attorney for the City of Greenwood, Mississippi, a true copy of the above and foregoing brief.

This the 16th day of November, A. D. 1933.

EDWARD W. SMITH,
Of Counsel for Appellant.

APPENDIX.

SECTION 56 OF CHAPTER 88, MISSISSIPPI LAWS OF 1930. —"COTTON BUYERS. Every person engaged in the business of buying or selling cotton for himself shall pay a privilege tax of one hundred ($100) dollars; but, where a cotton buyer only buys cotton from one gin in only one county or buys from the producers in only one municipality, said privilege tax is twenty-five dollars ($25); the license must be issued in his name and may be paid on or before the first day of September for a full year; only the municipality of his residence can collect a municipal privilege tax of him. Every individual, firm, partnership or corporation engaged in the business of buying or selling cotton shall take out in his or their name a state privilege tax of twenty-five dollars ($25) for every employee engaged in their business as buyer or seller, on or before the first day of September; such privilege tax shall authorize the buying or selling cotton by its bearer; and it shall be unlawful for any employee to buy or sell cotton without a privilege tax in his possession, issued in the name of his employer. Such licenses cannot be issued for less than a year. If the individual, firm, partnership or corporation take out a municipal privilege in his or their name for the municipality of the residence of their employee and take out also the state privilege tax imposed on them above, such employee shall have the authority to buy or sell cotton in any other municipality of the state, without paying any further state or munici-

pal privilege tax. But the above privilege taxes shall not be required of any landlord or other person who receives cotton in payment of accounts due him, nor of any merchant who pays a privilege tax on a store and who purchases only from the producer at the place of business of such merchant, nor to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

SECTION 62 OF CHAPTER 89, MISSISSIPPI LAWS OF 1932. —"COTTON BUYERS. Upon every person engaged in the business of buying or selling cotton for himself, as follows:

When less than 2,500 bales are handled annually —$25.

When 2,500 bales and less than 5,000 are handled annually—$50.

When 5,000 bales or more are handled annually —$100.

Upon each person buying or selling cotton as an agent for a licensed cotton buyer—$25.

But this section shall not apply to any landlord, merchant, or other person who only receives cotton in payment of accounts due him, or to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

SECTION 2445, MISSISSIPPI CODE OF 1930: "FIRST—LICENSE TAX IS ADDITIONAL.—All cities or towns are hereby authorized to levy and collect license tax upon, and regulate all callings, trades, professions and occupations conducted, pursued, carried on or operated within the limits of said city or town, the same not to exceed fifty

per centum of the state license tax levied upon the same callings, trades and professions; provided, however, that whenever the penalty attaches under the state law for failure to take out the privilege tax before beginning business, or failure to pay within the month due, said cities or towns are hereby authorized to collect a penalty equal to the amount of the license in addition thereto."

SECTION 255 OF CHAPTER 88, MISSISSIPPI LAWS OF 1930: "DAMAGES AND PENALTY FOR FAILURE TO PROCURE LICENSE.—All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by law, or who shall fail to renew, during the month in which it is due, the license on a business for which he has theretofore procured a privilege license, shall in each or either such instance be liable for double the amount of the tax required for such business, and it is hereby made the duty of the collector whose duty it is to collect the tax on such business to collect the said tax and penalty, issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words: 'COLLECTED AS DAMAGES,' and they shall account for all such penalties, less commissions, as they are required to account for other privilege taxes. In addition to the hereinabove described penalties the delinquent taxpayer shall be guilty of a misdemeanor and subject to the penalties therefor."

SECTION 2549, MISSISSIPPI CODE OF 1930: "PENAL OFFENSES UNDER GENERAL LAWS.—All offenses under the

penal laws of the state which are a misdemeanor shall, when so provided by a general ordinance of the municipality, also be offenses against the city, town or village in whose corporate limits the offense may have been committed to the same effect as though such offenses were made offenses against the city, town or village by separate ordinance in each case, and upon conviction thereof the same punishment shall be imposed by the city, town or village as is provided by the laws of the state with regard to such offenses against the state not in excess of the maximum penalty which may be imposed by municipal corporations."

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